

**BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM**

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 24th day of June 2016

**O.P.Nos.103/2014, 104/2014,
105/2014,106/2014,107/2014&108/2014**

O.P.No.103/2014

Petitioner : Anwar Mundeth,
S/o Abubaker, Mundeth House, Edavoor,
Ernakulam District, PIN: 683 544.
Member, Ward No.5
Okkal Grama Panchayat

**(By Advs. M.Hashim Babu &
Sajitha.S)**

Respondent : M.V.Benny
Manikathan House, Thannipuzha,
Okkal P.O.Ernakulam District.
Member, Ward No.2,
Okkal Grama Panchayat,

(By Adv. Fathahudeen.M)

O.P.No.104/2014

Petitioner : Anwar Mundeth,
S/o Abubaker, Mundeth House,Edavoor,
Ernakulam District, PIN: 683 544.
Member, Ward No.5
Okkal Grama Panchayat

**(By Advs. M.Hashim Babu&
Sajitha.S)**

Respondent : P.K.Mohammed Kunju,
Poothiri House, Chettamattom,
Okkal P.O.Ernakulam District.
Member, Ward No.13,
Okkal Grama Panchayat,

(By Adv. Fathahudeen.M)
O.P.No.105/2014

Petitioner : Anwar Mundeth,
S/o Abubaker, Mundeth House, Edavoor,
Ernakulam District, PIN: 683 544.
Member, Ward No.5
Okkal Grama Panchayat

(By Adv. M.Hashim Babu & Sajitha.S)

Respondent : Deepa Anil,
Madappalli House,
Okkal P.O.Ernakulam District.
Member, Ward No.15,
Okkal Grama Panchayat,

(By Adv. Fathahudeen.M)
O.P.No.106/2014

Petitioner : Anwar Mundeth,
S/o Abubaker, Mundeth House, Edavoor,
Ernakulam District, PIN: 683 544.
Member, Ward No.5
Okkal Grama Panchayat

(By Adv. M.Hashim Babu & Sajitha.S)

Respondent : T.G.Babu,
Thathuppara House, Okkal P.O.
Ernakulam District.
Member, Ward No.16,
Okkal Grama Panchayat,

(By Adv. Fathahudeen.M)

O.P.No.107/2014

Petitioner : Anwar Mundeth,
S/o Abubaker, Mundeth House, Edavoor,
Ernakulam District, PIN: 683 544.
Member, Ward No.5
Okkal Grama Panchayat

**(By Advs. M.Hashim Babu &
Sajitha.S)**

Respondent : Mini Shaju,
W/o Shaju, Manikathan House,
Thanipuzha, Okkal P.O.
Ernakulam District.
Member, Ward No.1,
Okkal Grama Panchayat,

(By Adv. Fathahudeen.M)

O.P.No.108/2014

Petitioner : Anwar Mundeth,
S/o Abubaker, Mundeth House, Edavoor,
Ernakulam District, PIN: 683 544.
Member, Ward No.5
Okkal Grama Panchayat

**(By Advs. M.Hashim Babu &
Sajitha.S)**

Respondent : N.O.George,
Njezhunkal House,
Okkal P.O.Ernakulam District.
Member, Ward No.14,
Okkal Grama Panchayat,

(By Adv. Fathahudeen.M)

These petitions having come up for hearing on the 10th day of June 2016, in the presence of Advs. **M.Hashim Babu & Sajitha.S** for the petitioner and Adv. **Fathahudeen.M** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These petitions are filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents are disqualified for being members of Okkal Grama Panchayat and also declaring them as disqualified to contest as candidates in any election of the local authority for a period of six years from the date of the order.

2. As the questions of law and facts involved in these petitions are common, they have taken up together treating O.P.No.103/2014 as the main case. The petitioner in all the petitions is one and the same.

3. The petitioner's case in brief is as below:- The petitioner and respondents are elected members of Okkal Grama Panchayat, Ernakulam District in the election held in October 2010. They belong to Indian National Congress party which is part of the coalition, United Democratic front. There are 16 wards in Okkal Grama Panchayat. The UDF won 12 seats and out of which Indian National Congress alone secured 11 seats and the Kerala Congress

(M) independent one seat. The LDF has 3 seats and they are all from CPI(M). The remaining one seat was won by a complete independent. As the UDF secured majority it decided to form the board. The petitioner was elected as the President and Smt. Mini Shaju, the respondent in O.P.107/2014 representing ward No.1 was elected as Vice President.

4. Smt. Mini Shaju and some others were not in good terms with the petitioner and there exists some differences among the members of the Indian National Congress. Consequent to that Smt. Mini Shaju resigned from the post of Vice President ship on 23.07.2014 without informing the political party or parliamentary party. Thereafter election of the Vice President was notified and the meeting to elect the Vice President was called for on 20.08.2014. The parliamentary party meeting of Indian National Congress was convened in the presence of DCC President and in the said meeting Smt. Sindhu Teacher who is representing ward No.9 was unanimously decided as the Vice President candidate of Indian National Congress. The D.C.C President Shri. V.J. Poulouse has issued whip to all the members of Indian National Congress to vote in favour of Smt. Sindhu Teacher and the whip was served to all the members of Indian National Congress through speed post. But the election meeting could not be convened on 20.08.2014 for want of quorum and it was adjourned to 21.08.2014. It was so happened because the respondents in connivance with LDF members did not attend the meeting on 20.08.2014 and the respondents

intentionally disobeyed the whip. The matter was reported to the DCC President and he directed to convene an urgent meeting of the parliamentary party and local leaders of the party. The respondents had purposefully abstained from that meeting. In the course of the meeting Smt.Sindhu Teacher sought permission to withdraw her candidature as there was threat from the side of the respondents. The parliamentary party decided Smt.Viji George as Vice President candidate and the DCC President issued whip to vote in her favour. The whip was served to the members present there and the whip to the members who abstained from the meeting was served by affixture. The respondents were well aware of the whip issued by the political party in the election to the post of Vice President on 21.08.2014.

5. On 21.08.2014 the respondents abstained along with LDF members as preplanned. The election was held and Smt. Viji George was elected as Vice President with the support of UDF members. The purposeful violation of the whip is an intentional act on the part of the respondents to defy the direction issued by the DCC President. The respondents are not expected to vote or abstaining from voting violating the instructions of the party. Abstaining from attending the meeting has the same effect of voting against the candidate proposed by the political party. The respondents have not applied for leave from the Panchayat and no permission was sought from the party to avail leave. This is a clear case of defection liable for disqualification provided under the

Kerala Local Authorities (Prohibition of Defection) Act. The respondents who are elected members of Indian National Congress, chose to take a stand different from that of the political party which is not permissible. The conduct of the respondents amounts to voluntarily abandoning of membership from the Indian National Congress as they became disloyal to the political party. Hence these petitions.

6. The respondents filed statement of objections raising common contentions which in brief are as below,- The petitions are not maintainable. The Indian National Congress has not set up either Smt. Sindhu Teacher or Smt. Viji George as the Vice President candidate of Congress (I) or UDF as alleged. No whip as per law was served on the respondents by the political party or by the authorised person as alleged. The provisions of Anti Defection Law of the local authorities in Kerala cannot be attributed to the respondents. The petitioner and at his instance some other members of Congress (I) unnecessarily caused disturbances to Smt. Mini Shaju in discharging her responsibilities as the Vice President of the Panchayat and various allegations and imputations were made against her which drove her to resign from the post of Vice President with the permission of the party. The parliamentary party meeting of Indian National Congress was not convened and Smt. Sindhu Teacher was not proposed as the Vice President candidate as alleged in the petition. The details of the parliamentary party meeting are not stated in the petition. The respondents were not informed about such a meeting. As there

was no political decision to field Smt.Sindhu Teacher as Vice President candidate of Congress(I) in the election on 20.08.2014 she expressed her unwillingness to contest the election. The respondents have not attended the meeting convened for Vice President election as there was no political decision or any whip of the party. No parliamentary party meeting was held at Perumbavoor TB on 20.08.2014 as alleged. The respondents have no knowledge regarding the candidature and withdrawal of Smt.Sindhu Teacher and also the candidature of Smt.Viji George. No decision was taken by the political party or the coalition to field Smt.Viji George. The respondents have no knowledge regarding the alleged whip issued by the party for the election of Vice President held on 21.08.2014. There was no such whip as alleged. The respondents did not attend the meeting as they were not served with any whip or decision of the party. Further, the candidate allegedly fielded by the party was elected to the post of Vice President without any opposition and therefore there is no question of tarnishing the image of the Congress (I) party as alleged. The respondents have never showed any disloyalty to the party and they did not defy the decision of the party as alleged. The allegation that the respondents have acted in violation of the decision of the party is not correct. The abstention of the respondents from the meeting cannot be termed as voluntarily giving up of the membership from the party. There was no decision of the party to be complied with as alleged. Hence the respondents pray dismissal of the petitions.

7. The evidence in these cases consists of the oral testimonies of PWs1 to 3, RWs1 to 3 and Exts.P1 to P10(e), R1 to R5 and X1 and X3.

8. Both sides were heard.

9. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondents have disobeyed the decision and direction of Indian National Congress party in the election to the post of Vice President as alleged?
- (iii) Whether there was any sufficient cause for the respondents for not attending the election meeting held on 20.08.2014 and 21.08.2014 as contended by the respondents?
- (iv) Whether the respondents have committed defection as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act?
- (v) Whether the respondents have voluntarily given up their membership from the Indian National Congress as alleged?
- (vi) Reliefs and costs?

10. **ISSUE No.(i)**: These petitions are filed by PW1, the petitioner in all the above O.Ps alleging that the respondents have become subject to disqualification for being members of Okkal Grama Panchayat. Admittedly the petitioner and respondents were elected as members of Okkal Grama Panchayat in the election held in October 2010 and all of them contested the election as candidates of Indian National Congress. There are 16 wards in the Okkal Grama Panchayat and the Congress led UDF secured 12 seats. As the UDF got majority they decided to form the board. Petitioner was elected as the president

and Smt Mini Shaju as Vice President. Later Smt.Mini Shaju resigned from the post of Vice President on 23.07.2014 resulting a fresh election of Vice President.Fresh election of the Vice President was fixed to be held on 20.08.2014. On that day the respondents and LDF members were not present and the meeting had to be adjourned to 21.08.2014 for want of quorum. On 21.08.2014 also the respondents abstained from attending the meeting along with LDF members.

11. According to the petitioner the respondents had abstained from voting both on the 20th and 21st August, 2014 aligning themselves with LDF members, defying the direction of the Congress party and hence they have become subject to disqualification. The respondents have denied the allegations and among other things they contended that the petitions are not maintainable. Though such a contention is put forward in their statement there is nothing from their side to show that these petitions are not maintainable. Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, states that if a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party or by a person or authority authorized by the party in this behalf votes or abstains from voting, in an election to the post of President, Vice President or on a no confidence motion moved against them, he shall become subject to disqualification for being a member of that local authority. As the respondents abstained from attending the election meeting

defying the direction issued to them by their party, Section 3(1)(a) of the Act is applicable to them.

12. It may be noted that these petitions are filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. As per Section 4(1) of the Act, if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it in this behalf may file a petition before the State Election Commission for decision.

13. From the pleadings and evidence adduced in this case it can be seen that there arises a question as to whether the respondents became disqualified for being members of Okkal Grama Panchayat as provided by Section 3(1)(a) of the Act. These petitions are filed by a member of the same Panchayat of which the respondents also are members and they are filed within the time prescribed under Rule 4(A)(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. It may be noted that except stating that these petitions are not maintainable there is no material to show that these petitions are not maintainable. As these petitions are filed by a competent person within the time limit and a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Act these petitions are held to be maintainable. The point is answered accordingly.

14. **POINT Nos.(ii) to (vi)**:As stated above, the petitioner seeks a declaration that the respondents are disqualified for being members of Okkal Grama Panchayat and also from contesting as candidates in the election to local authorities for a period of six years. The respondents abstention from voting in the Vice President's election to the Panchayat held on 20.08.2014 and 21.08.2014 defying the direction of their political party are stated to be the reason for filing these petitions. According to the petitioner the respondents by their conduct voluntarily gave up their membership from the Congress party. There are 16 wards in the Okkal Grama Panchayat. The UDF won 12 seats and out of which Indian National Congress alone secured 11 seats and the Kerala Congress (M) independent one seat. The CPI(M) has 3 seats. The remaining one seat was won by a complete independent. As the UDF got majority it decided to form the board and the petitioner was elected as the President and Smt.Mini Shajuas Vice President. Later, it is stated, Smt.Mini Shaju resigned from the post necessitating an election of a new Vice President. Election to the new Vice President was fixed to be held on 20.08.2014. The Returning Officer issued notice to all the members of Okkal Grama Panchayat. Ext.P2 is the copy of the notice.

15. The petitioner and respondents were the elected members the Okkal Grama Panchayat and admittedly they all belong to Indian National Congress party. According to PW1 the respondents did not attend the meeting convened by the Returning Officer on 20.08.2014 as per Ext.P2 for electing the Vice

President and they deliberately abstained along with LDF members. It is stated by PW1 that prior to meeting to elect the Vice President on 20.08.2014 the parliamentary party meeting of the Congress party was convened on 16.08.2014 and 18.08.2014 in the presence of DCC President and other leaders. In the meeting held on 18.08.2014 it was unanimously decided to propose Smt.Sindhu Teacher as the candidate for the post of Vice President. Ext.X1 is the copies of the minutes of the parliamentary party meeting held on 16.08.2014 and 18.08.2014 and Ext.X2 is of 20.08.2014. Though the respondents were informed about the above meeting, it is stated, they did not turn up for the meetings on 16.08.2014, 18.08.2014 and 20.08.2014. Whip to vote in favour of Smt.Sindhu Teacher was given to all the members present on 18.08.2014 and the whip to the respondents were sent to them by speed post and also by courier service. Ext.P4(c) is the sheet containing the postal receipts for sending the whips to the respondents for the election meeting on 20.08.2014. It is further stated that the respondents refused to accept postal covers and also the onessent through courier service containing the whip to the respondents. Exts. P5(l) to P5(w) are the returned postal covers and courier articles. The endorsements on them would show that they reached to the respondents on 19.08.2014 and they refused to accept the same. It is also stated by PW1 that copies of the whip in respect of the election meeting on 20.08.2014 was given to the Secretary of Okkal Grama Panchayat and to evidence the same he has produced Ext.P3 copy showing the acknowledgment of the receipt of the same. Despite the direction

the respondents did not attend the election meeting held on 20.08.2014 and they abstained along with opposition members defying the direction of the Congress party and by doing so they have voluntarily given up their membership in the party, PW1 further states.

16. On 20.08.2014 five members from Congress party and one independent supported by Kerala Congress (M) alone were present at the election meeting. As 6 members alone were present the Returning Officer had to adjourn the election meeting to 21.08.2014 for want of quorum. Exts.P6 and P9 are the copies of the minutes of the said meeting prepared by the Returning Officer. Exts.P6 and P9 would show that the election meeting for the post of Vice President was adjourned to 21.08.2014 for want of quorum. According to PW1 the respondents' deliberate abstention defying the direction of the party created such a situation. By doing so they have shown their disloyalty to the party and it is an act of dishonesty on their part. It is further stated by PW1 that the respondents abstained from the adjourned meeting also on 21.08.2014 defying the direction of the party. By their deliberate abstention of the election meeting on 20.08.2014 and 21.08.2014 they acted against the interest of the party. Their conduct would amount to defection and voluntarily giving up their membership in the political party.

17. PWs2 and 3 also gave evidence supporting the case of the petitioner. PW2 is the President of Ernakulam DCC and PW3 is the Okkal Mandalam President of the Congress party. It is stated by PW2 that it was he who as DCC

President allotted official symbol of the Congress party to the Congress candidates in Okkal Grama Panchayat including the petitioner and respondents and he is the competent authority for that. Regarding the Vice President election on 20.08.2014 in question it is stated by him that the parliamentary party meeting of the elected member of Okkal Grma Panchayat along with other congress leaders called for on 16.08.2014 and 18.08.2014 he presided over the said meetings. Respondents were aware of both the meetings and he also personally contacted them over phone but the respondents did not attend the parliamentary party meetings held on 16.08.2014 and 18.8.2014. In the meeting held on 18.08.2014 Smt.Sindhu Teacher was decided as Vice President candidate and he had issued whips to all the members to vote in favour of Smt.Sindhu Teacher. According to PW2, Ext.X1 is the copies of the minutes of the meetings held on 16.08.2014 and 18.08.2014 and Ext.X2 is of 20.08.2014. They contain his signatures.It is further stated by him that Ext.P3 is the copy of the whip issued by him and the respondents refused to accept the whip sent to them. Evidence of PW3 the Mandalam President also would show that parliamentary party meetings were held on 16.08.2014, 18.08.2014 and also on 20.08.2014 to discuss the Congress candidate of the Vice President. He also stated about the Vice President candidate decision and the whip issued by PW2, the DCC President.

18. The respondents admit their abstention from the Vice President election meeting on 20.08.2014 and 21.08.2014. According to them there was

no parliamentary party meeting as alleged and there was no direction from the party regarding the candidate of the Vice President directing them to attend the meeting and vote and hence they abstained. To them their abstention had no impact in the election and the candidate of the Congress party was elected as Vice President and that the party has not suffered any loss or damage due to their abstention. It is also their contention that their abstention will not amount to defection and in no way it can be termed as voluntarily giving up their membership in the party. The respondent in O.P.103/2014 was examined as RW1. RWs 2 and 3 are the other witnesses examined on their side. According to RW1 the respondents are even now working in Congress party attending party programmes. RWs 2 and 3 were examined to prove the said contention of the respondents. RW2 is the Vice President of the Perumbavoor Block Committee of Indian National Congress and RW3 is the Secretary of the Okkal Mandalam Congress Committee.

19. It may be noted that a meeting was convened by the Returning Officer on 20.08.2014 to conduct the election to the post of Vice President of Okkal Grama Panchayat. Notice was issued to all elected members in advance complying the provisions and notice was served on them. Admittedly all the respondents received the election notice and there is no dispute over. So all the respondents were aware of the Vice President election convened on 20.08.2014. Admittedly the respondents did not turn up for the meeting and they abstained from voting. The contention of the respondents is that they were not aware of

the parliamentary party meeting of the Congress party held prior to 20.08.2014 and also the alleged meeting on 20.08.2014 and the direction and the whip issued by the party. As there was no direction from the party to them to attend and vote they did not attend the election meeting on 20.08.2014 and 21.08.2014 the next day to which date it was adjourned, they further contend. But the evidence and the circumstances emanating therefrom would only go against their contention. Evidence of PWs 1 to 3, Exts.X1 and X2 would show that there was meeting of parliamentary party on 16.08.2014, 18.08.2014 and 20.08.2014 and following that whip was issued to all the members regarding the voting on 20.08.2014 and 21.08.2014. Exts.X1 and X2 are the copies of the minutes in respect of the parliamentary party meeting held on 16.08.2014, 18.8.2014 and 20.08.2014 under the President ship of PW2, the DCC President, It has come in evidence that other congress leaders also participated in the meeting. PW2 clearly stated about the parliamentary party meeting held on 16.08.2014, 18.08.2014 and 20.08.2014 and the whips issued by him to all the members. I do not find any reason to discard Exts.X1 and X2 and there is no necessity for PW2 to create such documents and to adduce evidence in support of Exts.X1 and X2.

20. It is admitted by RW1 that it was PW2 who allotted the official symbol of Congress party to him to contest the election as a Congress candidate. He is the competent person to allot the symbol and he is the person to issue the whip also, to the members. Ext.P3 is the copy of the whip issued by PW2 to the

members including the respondents under the letter head of DCC regarding the voting on 20.08.2014. It is true that the whip for the election meeting on 20.08.2014 was not directly given to the respondents as they were not present in the meeting on 18.08.2014. It is in evidence that the whip was sent to them both by speed post and also through courier service. Ext.P4 (Series) postal receipt and Exts.P5(l) to P5(w) returned postal covers and courier articles would show the said fact. The postal endorsements and the covers would show that the respondents were aware of the whip issued in respect of the election meeting held on 20.08.2014 and they refused to accept the postal covers and the covers sent through courier service. It may be noted that their refusal was on 19.08.2014 as per the endorsements. Refusal to accept Exts.P5(l) to P5 (w) by the respondents is to be taken as deemed service and the respondents cannot contend that they were in darkness about the stand and decision of their party in the Vice President's election on 20.08.2014. Their refusal to accept the whip sent by post and courier is only with a view to make out a defence in cases like these which they anticipated to be filed against them as contended by the learned counsel for the petitioner. There is no necessity for the postal authorities to make a false endorsement and no allegation of any mal practice on the part of the postal authorities or postman was made also. I do not find anything to disbelieve the postal endorsement on the returned postal articles. The respondents are responsible elected members of Congress party and they cannot simply sit idle in their houses when an important election meeting was

convened by the Returning Officer on 20.08.2014 for the election of their own Vice President.

21. Further, it may be noted that PW2 is the DCC President of the Congress party and the competent person to issue the whip. The respondents have no case that PW2 as any grudge towards them to depose against them and that there is another authority in the party to issue the whip.

22. The learned counsel for the respondent has a contention both PWs1 and 2 made contradictory statement regarding the venue of parliamentary party meeting. According to the counsel PW1 stated that the venue as Perumbavur TB and PW2 stated as DCC office. But there is no such confusion or contradictory statement regarding that aspect. The evidence of PWs1 and 2 would show that the parliamentary party meeting held on 16.08.2014 and 18.08.2014 were from Perumbavur TB and the meeting held on 20.08.2014 was from the DCC office. There is no such contradiction as alleged and hence the above contention of the learned counsel is only to the ignored and I do so.

23. It is a matter of admission that the respondents abstained from voting in the Vice President election held on 20.08.2014 and 21.08.2014. The reason put forward by the respondents for their abstention as indicated above is that no direction was issued to them by the party to attend and no decision was taken to nominate any member to the post of Vice President. But it has come in evidence that the party has taken a decision to propose the name of Smt.Sindhu Teacher for the post of Vice President in the election held on 20.08.2014 and

whip was issued to that effect to the members and the whips sent to the respondents were returned on account of their refusal to accept. Because of the absence of the respondents along with opposition LDF members there was no quorum for the meeting and election to Vice President had to be adjourned to 21.08.2014, the next date. According to PWs1 to 3 another member Smt Viji George was decided as the candidate for the Vice President in the Parliamentary party meeting held on 20.08.2014 as Smt. Sindhu Teacher expressed her unwillingness to contest and consequently whip was issued to that effect for the election meeting on 21.08.2014. It is stated that the respondents refused to accept the said whip also. Exts.P5 to P5(j) are returned covers. It is to be stated that normally it will be difficult to serve the whip of 20.08.2014 before the election on 21.08.2014. It is true that as per the postal endorsement they refused to accept the postal covers on 21.8.2014. But at what time Exts.P5 to P5(j) were attempted to be served is not there in the endorsements. So a definite finding regarding refusal endorsement on them can be given. So the whip issued on 20.08.2014 for the election meeting on 21.08.2014 cannot be taken as served before the election time on 21.08.2014 only on the basis of the postal endorsements on them. Anyway it cannot be contended that they were not aware of the election meeting on 21.08.2014. Of course Ext.P8 whip issued on 20.08.2014 cannot be taken as served before the election time for the reason stated above. But that is not the case regarding the whip issued for the election on 20.08.2014 and it is found above that the same is to be taken as served.

24. Argument of the learned counsel for the respondents is that the whip issued in these cases was by the DCC President and not on the basis of any decision of the party and hence it cannot be taken as a valid whip. But it is clearly stated by PW2 that he has issued Ext.P3 and P8 whip on behalf of the party and he is the competent person to issue the whip. It may be noted that it was PW2 who allotted the official symbol to the respondents to contest and he is the authority to issue the whip also. It is also admitted by RW1 that he is bound by the direction of PW2 DCC President and if he disobeys the direction it will amount to defection. His case is that PW2 the DCC President issued the whip in this case without conducting the meeting of DCC and hence his direction is not binding on them. RW1 has no case that the DCC was against the whip issued by PW2 and he is not the authority to issue the whip. Further, nowhere in the objection statement the respondents have a case that the whip issued in this case was in the individual capacity of PW2. It may be noted that Ext.P3 was in the letter head of all and was issued for and on behalf of the DCC by the DCC President. It is in evidence that Ext.P3 was issued for and on behalf of the Congress party. So the above contention that PW2 has no authority to issue the whip is only to be turned down.

25. It is also the contention of the respondents that even after the Vice President's election in question they were working in the party attending party meetings and hence they cannot be disqualified. But it is to be stated that their subsequent participation in the party meeting will not absolve them from their

acts of disobedience of the direction of the party and the disloyalty shown by them on 20.08.2014.

26. Section 3(1)(a) of the Act has two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership of such political party and second limb comes to play when such member violates or disobeys the direction issued by the political party or a person authorized by it in this behalf. As per clause (iva) of Section 2, a direction in writing means a direction in writing signed with date, issued to a member belonging to or having the support of a political party, by the person authorized by the political party from time to time to recommend the symbol of the said party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting.

27. The object sought to be achieved by the Act is to prohibit defection among members of the Local Authorities and to provide disqualification for the defecting members. What is ultimately sought to be prevented is the evil of the political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. It is settled law that if a member or a group of elected members of a political party takes a different stand from that of the political party as such and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. The

Kerala Local Authorities (Prohibition of defection) Act, derived its source from the *10th schedule to the Constitution of India*. While upholding the Constitutional validity of 10th schedule, the *Apex Court in Kihoto Hollohan Vs.Zachillhu (1992) Supp.2 SCC 651*” observed as follows:-

“A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party.If a member while remaining a member of the political party which had set him up as a candidate at the election votes or abstains from voting contrary to any ‘direction’ issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, he incurse disqualification. A political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political

party's declared politics will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance-nay indeed its survival.To vote against the party is disloyalty. To join with others in abstention or voting with other side smacks of conspiracy.”

28. In the decision reported in 2008 (3) KHC 267in (Faisal P.A. Vs. K.A.Abdulla Kunhi) it was held as follows,-

“Since the words voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by resignation, from the conduct of the petitioner if an inference can be drawn that he has voluntarily given up his membership of his political party, he is liable to be disqualified. From the facts noticed by the second respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation.”

29. A member belonging to a political party has to be loyal to his party and the moment he becomes disloyal he would become subject to

disqualification on the ground of voluntarily giving up his membership from the party. The conduct of the respondents in having abstained from the election meeting held on 20.08.2014 would clearly demonstrate that they became disloyal to the party which elected them as members. It is found above that the direction given by PW2 to attend the election meeting held on 20.08.2014 and to vote in favour of the Vice President candidate nominated by the party, was duly communicated to the respondents as provided by sub-rule (2) of Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Rules. It is in evidence that the respondents refused to accept the whip issued by PW2 and sent by post and also through courier service. The endorsements on the returned covers would show the said fact. From the available materials in this case it can be seen that the respondents were fully aware of the direction issued by PW2 in respect of the election meeting held on 20.08.2014. It can also be inferred that the respondents were aware of the election meeting held on 21.08.2014. Anyway there is no satisfactory evidence regarding the time of the refusal to accept the whip sent by post in respect of the meeting on 21.08.2014 and hence I leave that aspect there without further discussion. But the respondents' abstention from the election meeting on 20.08.2014 defying the direction of the party inviting disqualification is clearly established in these cases. The menace of defection is, certainly, to be curbed.

30. Ongoing through the entire evidence and the circumstances in these cases I will have to necessarily hold and I hold that the respondents have

voluntarily given up their membership from the party in which they belong as provided by Section 3(1)(a) of the Act and therefore they became subject to disqualification for being members of Okkal Grama Panchayat. Points are answered accordingly.

In the result, all the petitions are allowed and the respondents are declared as disqualified for being members of Okkal Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the respondents are also declared as disqualified for contesting as candidates in an election to any local authorities for a period of 6 years from this date, as provided by Section 4(3) of the Act.

Considering the circumstances of the case the parties are directed to bear their respective costs.

Pronounced before the Commission on this the 24th day of June 2016

V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Sri.Anwar Mundeth,
PW2 : Sri.V.J. Poullose, DCC President, Ernakulam
PW3 : Shri.Babu, President, INC Okkal Mandalam
Committee

Witnesses examined on the side of the respondent

RW1 : Sri.M.V.Benny
 RW2 : Sri.Surendran
 RW3 : Sri.P.K.Jayson, Secretary INC,
 Okkal Mandalam Committe

Documents produced on the side of the petitioner

P1 : Copy of the register showing the Party affiliation of the members of Okkal Grama Panchayat

P2 : Copy of the notice to the election to the post of President, Okkal Grama Panchayat, issued by the Returning officer

P3 : Copy of the whip issued by the President DCC, Ernakulam, issued to Smt.K.A.Saleema

P4 : A set of receipts of registered letter containing 5 receipts

P4(a) : A set of receipts of registered letter containing 5 receipts

P4(b) : A set of receipts of registered letter containing 4 receipts

P4(c) : A set of receipts of registered letter containing 7 receipts

P5 : Returned registered letter addressed to Sri.P.K.Mohamed Kunju

P5(a) : Returned registered letter addressed to Sri.K.P.Paily

P5(b) : Returned registered letter addressed to Sri.N.O.George

P5(c) : Returned registered letter addressed to Sri.M.V.Benny

P5(d) : Returned registered letter addressed to Sri.T.G.Babu

P5(e) : Returned registered letter addressed to Smt.Mini Shaju

- P5(f) : Returned registered letter addressed to Smt.Deepa Anil
- P5(g) : Returned registered letter addressed to Smt.Mini Shaju
- P5(h) : Returned registered letter addressed to Sri.T.G.Babu
- P5(i) : Returned registered letter addressed to Sri.N.O.George
- P5(j) : Returned registered letter addressed to Smt.Deepa Anil
- P5(k) : Returned registered letter addressed to Sri.K.R.Paily
- P5(l) : Returned registered letter addressed to Sri.N.O.George
- P5(m) : Returned registered letter addressed to Smt.Deepa Anil
- P5(n) : Returned registered letter addressed to Sri.T.G.Babu
- P5(o) : Returned registered letter addressed to Sri.M.V.Benny
- P5(p) : Returned registered letter addressed to Smt.Mini Shaju
- P5(q) to P5(w) : Returned letters sent by courier service addressed to various members of Okkal Grama Panchayat
- P6 : Copy of the minutes of the meeting to elect Vice President, Okkal Grama Panchayat held on 20.08.2014
- P7 : Copy of the whip issued by the President, DCC, Ernakulam dated 20.08.2014,
- P8 : Whip issued by the President, DCC, Ernakulam dated 20.08.2014
- P9 : Copy of the minutes of the meeting to elect the Vice President, Okkal Grama Panchayat, held on 21.08.2014
- P10 : Copy of the whip issued to Sri.P.K.Mohammed Kunju
- P10(a) : Copy of the whip issued to Smt.Mini Shaju
- P10(b) : Copy of the whip issued to Smt.Deepa Anil

- P10(c) : Copy of the whip issued to Sri.N.O.George
P10(d) : Copy of the whip issued to Sri.M.V.Benny
P10(e) : Copy of the whip issued to Sri.T.G.Babu

Document produced on the side of the respondents

- R1 : Minutes of the Congress parliamentary party
R1(a) : Minutes of the meeting of Congress parliamentary party held on 22.03.2013
R1(b) : Minutes of the meeting of Congress parliamentary party held on 27.04.2013
R1(c) : Minutes of the meeting of Congress parliamentary party held on 28.06.2013
R1(d) : Minutes of the meeting of Congress parliamentary party held on 24.03.2015
R1(e) : Minutes of the meeting of Congress parliamentary party held on 21.08.2014
R2 : Notice to Congress Parliamentary party meeting held on 28.06.2013
R3 : Acknowledgment of letter (registered) addressed to Shany Prakash
R3(a) : Acknowledgment of letter (registered) addressed to Bindhu Sasi
R3(b) : Acknowledgment of registered letter addressed to Viji George
R3(c) : Acknowledgment of registered letter addressed to Sanal Raj P.S
R3(d) : Acknowledgment of registered letter addressed to President, DCC, Ernakulam
R3(e) : Acknowledgment of registered letter addressed to C.J.Babu
R4 : Letter dated 16.03.2015 issued by President, Block Congress Committee, Perumbavoor
R5 : Copy of the resolutions taken in the meeting held on 28.06.2013

Documents produced on the side of the witnesses

- X1 : Copy of the minutes of meeting of the members of INC Okkal Grama Panchayat held on 16.08.2014& 18.08.2014

- X2 : Copy of the minutes of meeting of the members of
INC Okkal Grama Panchayat held on 20.08.2014
- X3 : Minutes Book of Congress Perumbavur
Block Committee

Sd/-

V.BHASKARAN
STATE ELECTION COMMISSIONER